

(29,713)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923.

No. 403

HYGRADE PROVISION COMPANY, INC.; E. GREENEBAUM
COMPANY, INC., AND GUCKENHEIMER & HESS, INC.,
APPELLANTS,

vs.

CARL SHERMAN, AS ATTORNEY GENERAL OF THE
STATE OF NEW YORK, AND JOAB H. BANTON, AS
DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK

INDEX

	Original	Print
Record from U. S. district court for the southern district of New York	1	1
Rule to show cause.....	1	1
Affidavit of David L. Podell.....	2	1
Bill of complaint.....	3	2
Notice of motion to dismiss.....	19	9
Motion to dismiss by attorney general.....	20	10
Notice of motion.....	24	11
Motion to dismiss by district attorney.....	25	12
Affidavit of David L. Podell.....	29	14
Exhibit to Affidavit—Testimony of Rev. Bernard Drachman, D. D.....	31	14
Affidavit of Moses Hyamson.....	42	19
Elias A. Cohen.....	49	26
Bernard Drachman.....	55	26

	Original	Print
Affidavit of Herbert S. Goldstein.....	57	26
D. De Sola Pool.....	58	26
Dr. Ph. Klein.....	59	27
Affidavits of M. S. Margolies.....	60	27
Opinion	63	28
Order denying motion for injunction and dismissing bill of complaint	73	33
Petition for and ordering allowing appeal.....	75	34
Notice of appeal.....	77	34
Assignment of errors.....	79	35
Citation and service..... (omitted in printing)..	83	36
Stipulation extending time.....	85	36
Bond on appeal..... (omitted in printing)..	86	37
Stipulation re transcript of record.....	88	37
Clerk's certificate.....	89	37

[fol. 1] **DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK**

**HYGRADE PROVISION Co., INC., E. GREENBAUM Co. and GUCKEN-
HEIMER & HESS, INC., Complainants,**

against

**CARL SHERMAN, as Attorney General of the State of New York, and
Joab H. Banton, as District Attorney of the County of New York,
Defendants**

RULE TO SHOW CAUSE—Filed February 14, 1923

Upon the bill of complaint and affidavit of David L. Podell hereto annexed, duly verified the 12th day of January, 1923, let the defendants and each of them appear at a stated term of this court to be composed of Judges in accordance with Section 266, Judicial Code amended (Section 1243 of the United States Compiled Statutes) to be held at the United States Court House in the Old Post Office Building on the 29th day of January, 1923, at 10:30 A. M. of that day or as soon thereafter as counsel can be heard and show cause why an order should not be made herein enjoining and restraining the defendant Carl Sherman, as Attorney General of the State of New York, and Joab H. Banton as District Attorney of the County of New York, from instituting proceedings of any kind for any act done or committed or omitted by the complainants, its officers and agents, and why the complainants should not have such other and further relief as to the court may seem just and equitable.

Service of a copy of this order on the defendants on or before the 19th day of January, 1923, shall be deemed sufficient.

Dated New York, January 17, 1923.

Jno. C. Knox, U. S. D. J.

[fol. 2] **STATE of New York,
County of New York,
City of New York, ss:**

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF DAVID L. PODELL

David L. Podell being duly sworn, deposes and says that he is an attorney-at-law and represents the complainants in the above entitled action. That he has had under consideration Chapters 580 and 581 of the Laws of 1922 of the State of New York which require the labeling of meat products as kosher or nonkosher in a manner more

fully set forth in paragraphs Sixth and Seventh of the bill of complaint annexed hereto. The deponent verily believes that the said enactments are void and unconstitutional in that they deprive the complainants of property without due process of law, in violation of Section 1, Article 14 of the Constitution of the United States and deny to the complainants the equal protection of the law, in violation of Section 1, Article 14 of the Constitution of the United States, and unreasonably interfere with the interstate trade and commerce of the complainants, in violation of Section 8, Article 1 of the Constitution of the United States.

That by reason of the fact that a serious question of constitutional law is involved, it is of the utmost importance and of public concern that this application be speedily heard in order that the rights and interests of the parties may be determined. No previous application has been made for this rule to show cause in this suit.

Wherefore, a rule to show cause is sought returnable within 14 days.

David L. Podell.

Sworn to before me this 12th day of January, 1923. Benjamin S. Kirsh. Benjamin S. Kirsh, Notary Public New York County, No. 416. Reg. No. 4377. Commission expires March 30th, 1924.

[fol. 3] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF
NEW YORK

[Title omitted]

BILL OF COMPLAINT

To the honorable judges of the District Court of the United States
for the Southern District of New York:

Hygrade Provision Co. Inc., E. Greenebaum Co., Inc., and Guckenheimer & Hess, Inc., of the State of New York, bring this, their bill of complaint against Carl Sherman, as Attorney General of the State of New York, and Joab H. Banton, as District Attorney of the County of New York, in the State of New York, and thereupon your orators complain and say:

First. That your orators are corporations organized under the laws of the State of New York and that the defendants herein, Carl Sherman and Joab H. Banton are residents and citizens of the State of New York. That the amount in dispute herein exceeds, exclusive of interest and cost, the sum or value of Three thousand (\$3,000) Dollars.

Second. Your orators further say that they have conducted a [fol. 4] general provision supply business which embraces the pur-

chase and sale of various meat commodities, both raw and prepared, which to your orators' honest belief are Kosher, and have conducted said business ever since said date and are now conducting the same. That said commodities, both raw and prepared, have been sold and shipped by your orators to, into and through the several states in the union, as well as in the State of New York.

Third. Your orators further show that for many years last past they have invested large amounts of money in building up and thoroughly establishing a large and lucrative trade among said dealers and retailers in the said meat commodities, and at present there are many hundreds of such dealers within said state who are buying, carrying in stock, and selling to the public, the said meat commodities prepared and sold by your orators as aforesaid. Your orators' gross annual sales amount to many millions of dollars.

Fourth. Your orators' plants, wherein such meats are prepared are under constant and continuous government inspection and supervision. That all of the meat, whether raw or prepared, is inspected and examined by duly authorized agents of the Department of Agriculture of the Government of the United States from the time it reaches the premises of your orators until it leaves said premises for delivery pursuant to sale or otherwise. Your orators sell, deliver and ship only such meat, articles or commodities for human consumption as are approved under the laws and regulations of the Department of Agriculture as being clean, pure, wholesome and fit for [fol. 5] human food. That any meat or meat commodity, whether raw or prepared, which does not pass a rigid inspection, and which does not receive proper approval under government supervision, is not sold for human food, and your orators therefore say that all of the meats, raw or prepared, which your orators have shipped and continue to ship are pure, clean, wholesome, and proper food eminently fit and desirable for human consumption.

Fifth. That such meat commodities have come to be used very extensively by the public and the good name, good will and trade thus established is of very great value to your orators. That the large bulk of the meat sold and shipped by your orators is wrapped in separate parcels, boxes and barrels bearing the name of your orator inscribed thereon, and your orators have thereby become well and favorably known to the trade and to their customers as producing a desirable wholesome commodity, properly inspected and approved under government supervision, and entirely fit and desirable for human consumption.

Sixth. Your orators further show: That the Legislature of the State of New York at its 1915 session adopted an Act, known as Sub-division 4 of Sec. 435 of the Penal Law, which was duly approved and went into effect on the 1st day of September, 1915, which law provided as follows:

"A person, who, with intent to defraud: Sells or exposes for sale any meat or meat preparations, and falsely represents the same to be

kosher, or as having been prepared under and of a product or [fol. 6] products sanctioned by the orthodox Hebrew religious requirements; or falsely represents any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word 'kosher' in any language, is guilty of a misdemeanor."

Seventh. Your orators further say: That the Legislature of the State of New York, at its 1922 session, passed an Act "to amend the Penal Law in relation to the sale and offering for sale of kosher meat or meat preparations," which Act was approved April 11th, 1922 and became Chapter 580 of the Laws of 1922 of the State of New York. That said Act provides:

"Section 1. The penal law is hereby amended by inserting therein a new section, to follow section four hundred and thirty-five, to be section four hundred and thirty-five-a, to read as follows:

Sec. 435-a. Sale of kosher meat and meat preparations.—A person, who, with intent to defraud sells or exposes for sale any meat or meat preparations and falsely represents the same to be kosher, whether such meat or meat preparation be raw or prepared for human consumption, or as having been prepared under and of a product or products sanctioned by the orthodox Hebrew religious requirements; or falsely represents any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word 'kosher' in any language; or sells or exposes for sale in the same place of business both kosher and nonkosher meat or meat preparation, either raw or prepared for human consumption, who fails to indicate on his window signs and all display advertising, in block letters at least four inches in height, [fol. 7] 'kosher and non-kosher meat sold here'; or who exposes for sale in any show window or place of business both kosher and non-kosher meat or meat preparations, either raw or prepared for human consumption, who fails to display over each kind of meat or meat preparation so exposed a sign in block letters at least four inches in height reading 'kosher meat,' or 'nonkosher meat,' as the case may be, is guilty of a misdemeanor.

Sec. 2. This Act shall take effect September first, nineteen hundred and twenty-two."

Eighth. Your orators further show: That the Legislature of the State of New York, at its 1922 session, passed an Act to amend the Penal Law in relation to the sale of kosher meat or meat preparations, which Act was approved on April 11th, 1922, and thereupon became Chapter 581 of the Laws of 1922 of the State of New York. That said Act provides:

"Section 1. Subdivision four of section four hundred and thirty-five of the penal law is hereby amended to read as follows:

"4. Sells or exposes for sale any meat or meat preparation and falsely represents the same to be kosher, or as having been prepared under and of a product or products sanctioned by the orthodox

Hebrew religious requirements; or falsely represents any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word 'kosher' in any language; or sells or exposes for sale in the same place of business both kosher and nonkosher meat or meat preparations who fails to indicate on his window signs and all display advertising, in block letters at least four inches in height, 'kosher [fol. 8] and nonkosher meat sold here'; or who exposes for sale in any show window or place of business both kosher and nonkosher meat or meat products who fails to display over such meat or meat preparation so exposed a sign in block letters at least four inches in height reading 'kosher meat,' or 'nonkosher meat,' as the case may be.

Sec. 2. This Act shall take effect immediately.

Ninth. And your orators further show: That the phrase "orthodox Hebrew religious requirements," as used in all of the above enactments, is vague, indefinite, uncertain and incapable of correct and common definition.

Tenth. Your orators further show: That the said term "kosher" used in all of said enactments is a word of the Hebrew language, and is likewise vague, indefinite, uncertain and incapable of correct and common definition. That its meaning is essentially based upon the phrase "orthodox Hebrew religious requirements."

Eleventh. And your orators further show: That where used in a strictly Hebrew religious sense, the term "kosher" may be described as clean, fit, proper, according to the orthodox Hebrew religious requirements, and the term "not kosher" may be described as meaning unclean, unfit, and improper according to the orthodox Hebrew religious requirements.

Twelfth. And your orators further show: That among the hundreds of customers within the State of New York to whom your orators have sold and shipped raw and prepared meat commodities are large numbers of dealers and retailers who sell what may be [fol. 9] described, according to their best belief, as kosher and nonkosher meats. That by reason of the confusion and lack of proper definition of the word "kosher," your orators, have, in the past, avoided wherever possible, labeling the merchandise either as "kosher" or "nonkosher," but have been at all times scrupulously careful to sell meats and meat commodities that were pure, clean, and proper food for human consumption. That wherever your orators could possibly determine in advance as to whether any meat commodity in their honest belief might be called "kosher," they have sold the same as "kosher," but not otherwise, and it has been impossible for your orators to determine with any degree of certainty, reasonable or otherwise, as to what is or what is not "kosher." Various commodities have been brought to your orators marked or labeled "kosher." That your orators could not possibly have known the origin or the process through which the said meat had been put to prior to the time that it was brought to the premises of your orators,

and had they known the process through which it had been put, it would be equally difficult, if not impossible, to determine whether the animals from which they were derived were so slaughtered, or whether they were so prepared after slaughtering as to comply with the orthodox Hebrew religious requirements.

Thirteenth. That your orators are advised by their counsel, and therefore aver, that under the amendments above set forth, that all such manufacturers, dealers or retailers who sell both kosher and non-[fol. 10] kosher meat commodities in their premises will be obligated to determine which of said products are kosher and which are not kosher, and likewise will be obligated to label or post a sign in four inch block letters upon all such commodities exposed for sale in the same place of business, identifying such individual packages as kosher or not kosher, which ever the case may be. That all such manufacturers, dealers or retailers who sell both kosher and non-kosher meats or meat products will be required to post a sign upon their windows or show windows or in their display advertising, announcing that both kosher and non-kosher meats are sold in the said premises.

Fourteenth. Your orators are further advised and therefore aver: That the defendant Carl Sherman is the duly elected Attorney General of the State of New York, and the defendant Joab H. Banton is the duly elected District Attorney for the County of New York, and therefore the prosecuting officer for said County, and that the said defendants have threatened to prosecute all complaints against persons or concerns engaged as manufacturers, dealers, retailers, or otherwise in the sale of raw or prepared meat commodities, who are charged with violating the statutes hereinbefore referred to.

Fifteenth. And your orators further show: That by reason of the threats of prosecution, and by reason of the fear inspired by the enactments and by the requirements of the above laws, the complainants and large numbers of complainants' customers when called upon at their peril to determine whether the meats or meat products are kosher or not kosher, and to label the same in accordance with the requirements of the law, have decided and will continue to decide [fol. 11] that all of the products sold by your complainants are not kosher. That such determination or decision on the part of your complainants and of said customers have been and will be entirely induced by the fear that some judge or jury might determine that the Rabbinical Law or the customs, traditions, and precedents of the orthodox Hebrew religious requirements necessitate that even such meats as your orators sell as kosher are not kosher. That as your orators have fully set forth above any such meats or meat products as are sold and shipped from your orators' premises with the label "Kosher" thereon, are according to the best information and belief of your orators prepared in strict accordance with what your orators honestly believe to be the orthodox Hebrew religious requirements, in so far as it is humanly possible for your orator to determine what such requirements are. In any event, your orators allege that all

of the meats sold and shipped from your orators' place of business are clean, wholesome, proper food commodities carefully inspected and eminently fit and desirable for human consumption.

Sixteenth. Your orators further show: That the labeling of any meats produced by your orators as not kosher is an unjust, unwarranted and unreasonable slander upon the property of your orators.

Seventeenth. Your orators further show: That by reason thereof they will be irreparably damaged in serious loss, destruction, and interference with their trade and good will, and with their name and [fol. 12] business reputation. That they will likewise be irreparably damaged in the deprivation and loss of numbers of their customers. That the sales and shipments made by your orators to, into, and through States other than the State of New York will thereby be substantially lessened and decreased. That their good will will, in course of time, be destroyed. That their investment of hundreds of thousands of dollars in their plant and in their equipment and their other property, real and personal, of the kind utilized in the conduct of their business will be substantially diminished in value, if not rendered of no value at all.

Eighteenth. Your orators allege that they sell and ship into states other than the State of New York from the State of New York more than \$2,500,000.00 worth of meat and delicatessen supplies every year, That the sales made by your orators are made to dealers, retailers and other consumers and are resold by said dealers, retailers and consumers in the said States other than the State of New York in their original unbroken packages.

Nineteenth. And your orators further show: That unless restrained and enjoined by the order of this Court, said defendants in their efforts to enforce the foregoing enactments will continue to threaten prosecutions of all those who do not comply with the foregoing requirements, and will thereby intimidate and annoy your orators and numerous persons engaged in selling the meats and meat products of your orators, and that their course will be followed by other prosecuting attorneys within the State of New York, and will [fol. 13] likewise threaten and procure prosecutions of the persons selling the merchandise of your orators, and the inevitable effect thereof will be to interfere and obstruct your orators in the conduct of their business, causing them great financial loss, interfering with their property rights in said meats and meat preparations, and with their right to vend the same freely, and will thereby inflict great and irreparable injury upon your orators which it will be impossible to compensate in damages or accurately to ascertain, and for which there is no adequate legal remedy. That many of the persons engaged in the sale of your orators' said meats and meat preparations have already discontinued their purchases and sales of said meats and meat preparations because of the fear of criminal prosecution induced by the threats of said defendants as aforesaid, and that large numbers of those who are not handling said meats and meat preparations, and

are not yet buying and selling same, will be hereafter induced by said threats to discontinue the sale thereon, unless the defendants are restrained as aforesaid from threatening such prosecutions, and from all other acts calculated to induce your orators' said customers to believe that by purchasing and selling said meats or meat preparations from your orators without such labels or notices, or by erroneously labeling the same they expose themselves to such threatened prosecution.

Twentieth. And your orators further show: That said statutes deprive your orators of their right to vend and sell their products within the State of New York and other States without due process [fol. 14] of law, and is violation of said Section 1, Article 14 of the Constitution of the United States.

Twenty-first. And your orators further aver: Said acts of the Legislature of the State of New York, fully above set forth, are void because contrary to and in violation of so much of Section 1, Article 14 of the Constitution of the United States as provides that no State shall deny to any person within its jurisdiction the equal protection of the law.

Twenty-second. And your orators further show: That said enactments fully above set forth are also in violation of so much of Section 8 of Article 1 of the Constitution of the United States as confers upon the Congress of the United States the power to "regulate commerce with foreign nations and among the several states and with the Indian tribes," and in that said act and each of said sections will, if enforced, unreasonably and arbitrarily interfere with commerce between the several states, and will as heretofore alleged, interrupt and destroy the interstate commerce in which your complainants are largely engaged as aforesaid.

Now, therefore, the premises being considered, may it please the court to grant unto your orators a writ of subpoena commanding the defendants at a day therein to be inserted, to be and appear before this Honorable Court, there to answer without oath (their oaths being hereby expressly waived), all and singular of the premises, [fol. 15] and to do and abide by such order and decree as this Honorable Court shall make therein; and until a final hearing of said cause, for as much as by reason of the premises the defendants will, unless restrained by order of this Court, take such action in the premises as will greatly injure and destroy the rights of your orators before a final hearing can be had upon the merits of this cause; and your orators further pray that your Honors will, pending said final hearing, grant a temporary injunction after proper notice of a hearing of this application for a temporary injunction at such time as your Honors shall designate, restraining and forbidding the defendants, their agents, assistants, and attorneys from taking any action in the premises or from instituting any proceeding against your orators, their employees, agents, or representatives, their customers or any one dealing with or selling the said meats or meat

products for any alleged failure to comply with the requirements of said enactments, and enjoining and prohibiting the said defendants, during the pendency of this suit and until the final hearing and determination thereof, from making any threats of prosecuting or from conducting any prosecutions of any and all persons by reason of their failure to label any of the meats sold by your complainants as "not kosher," or by reason of their failure to exhibit a four inch block letter sign or any sign upon the meats or meat products sold by your complainants bearing the words "not kosher," or from in any manner interfering or seeking to prevent the full, free, and unhampered sale of the products of your orators within the State of New York without labeling or designating the same as "not [fol. 16] kosher," and from injuring the business of your complainants by compelling it to be discredited in standing and reputation, and by having its merchandise wrongfully branded as "nonkosher," in accordance with the requirements of said enactments.

And will your Honors grant unto your orators all such further relief as may be just and equitable in the premises.

David L. Podell, Solicitor for Complainants.

[fol. 17] Jurat showing the foregoing was duly sworn to by I. G. Abramson, Samuel Slather and E. Greenbaum omitted in printing.

[fol. 18] [File endorsement omitted.]

[fol. 19] DISTRICT COURT OF THE UNITED STATES

[Title omitted]

NOTICE OF MOTION—Filed Feb. 14, 1923

SIRS: Please take notice that the motion to dismiss the bill of complaint herein has this day been filed in the District Court of the United States for the Southern District of New York, in the office of the Clerk of the said Court, and that the said motion will be set down for hearing and brought on for argument at a term of the said Court, constituted pursuant to §266 of the Judicial Code, to be held at the Old Post Office in the City and County of New York, Southern District of New York, on the 19th day of February, 1923, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Dated: New York, February 13, 1923.

Yours, etc., Carl Sherman, Attorney General of the State of New York. Samuel H. Hofstadter, Solicitor for Defendant Carl Sherman, as Attorney General of the State of New York, 60 Wall Street, New York City.

To Podell, Ansorge & Podell, Esqrs., Solicitors for Complainant, 233 Broadway, New York City.

[fol. 20] DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION TO DISMISS BILL OF COMPLAINT

Now comes the defendant, Carl Sherman as Attorney General of the State of New York, and upon the bill of complaint herein moves that the said bill of complaint be dismissed for the following reasons and upon the following grounds, to wit:

I. That it appears upon the face of the bill of complaint that the facts stated therein are insufficient to constitute a cause of action in equity.

II. That it appears upon the face of the bill of complaint that the complainant has a plain, adequate and complete remedy at law.

III. That it does not appear upon the face of the bill of complaint, and no sufficient facts are averred therein to show, that the intervention of a court of equity and the assumption of jurisdiction by such a court is necessary or essential in order to effectually protect the property or rights of property of the complainant from great and irreparable injury or from any injury whatsoever.

[fol. 21] IV. That Chapter 233 of the Laws of 1915, as amended by Chapter 581 of the New York Laws of 1922 (Penal Law, §435, subd. 4) is a valid statute, duly passed by the Legislature of the State of New York, in the due exercise of its lawful and constitutional powers and does not violate any of the provisions of either Article I, §8 of the Constitution of the United States or the Fourteenth Amendment to such Constitution; and it does not appear from the face of the bill of complaint or from the facts averred therein that the said statute, or the enforcement thereof by the State of New York by and through its governmental and administrative agencies, operates or will operate or deprive or deny the complainant of the equal protection of the laws, or to deprive him of liberty or of any property or rights of property without due process of law.

V. That Chapter 580 of the New York Laws of 1922 (Penal Law, §435-a) is a valid statute, duly passed by the Legislature of the State of New York, in the due exercise of its lawful and constitutional powers and does not violate any of the provisions of either Article I, §8 of the Constitution of the United States or the Fourteenth Amendment to such Constitution; and it does not appear from the face of the bill of complaint or from the facts averred therein that the said statute, or the enforcement thereof by the State of New York by and through the governmental and administrative agencies, operates or will operate to deprive or deny the complainant of the equal protection of the laws, or to deprive him of liberty or of any property or rights of property without due process of law.

[fol. 22] VI. That it appears upon the face of the bill of complaint that to grant the relief sought by the complainant would constitute an unlawful and unconstitutional interference by the agencies of the Government of the United States with the lawful and constitutional power, right and duty of the State of New York and its governmental agencies (including the Attorney General of the State of New York) to prosecute violations of criminal statutes of the State of New York.

VII. That it appears on the face of the bill of complaint that the complainant is not within the class of persons who are or may be injured by the alleged unconstitutionality of the provisions of the statutes set forth in the bill of complaint.

VIII. That it appears upon the face of the bill of complaint that this court is without power or authority to grant the relief or to render the judgment and decree prayed for.

IX. That no sufficient facts are alleged in the bill of complaint to warrant or justify the granting of the relief prayed for or any other equitable relief.

Wherefore, for the reasons and upon the grounds aforesaid, the defendant, Carl Sherman, as Attorney General of the State of New York, respectfully moves this Court that the bill of complaint herein be dismissed as to him.

Dated: New York, February 8th, 1923.

Carl Sherman, Attorney General of the State of New York.
Samuel H. Hofstadter, Solicitor for Defendant Carl Sherman, as Attorney General of the State of New York, 60 Wall Street, New York City.

[fol. 23] [File endorsement omitted.]

[fol. 24] UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION—Filed March 26, 1923

SIRS: Please take notice that the annexed motion to dismiss the bill of complaint herein has this day been filed in the District Court of the United States for the Southern District of New York, in the office of the Clerk of the said Court, and that the said motion will be set down for hearing and brought on for argument at a term of the said Court, constituted pursuant to §266 of the Judicial Code, to be held at the Old Post Office in the City and County of New York, Southern District of New York, on the 19th day of February 1923,

at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Dated: New York, February 14, 1923.

Yours, etc., Joab H. Banton, District Attorney in and for the County of New York. John Caldwell Myers, Solicitor for Defendant Joab H. Banton.

To Messrs. Podell, Ansorge & Podell, Solicitors for Complainants, 233 Broadway, New York, N. Y.

[fol. 25]

UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS BILL OF COMPLAINT

Now comes the defendant, Joab H. Banton, as District Attorney of the County of New York, and upon the bill of complaint herein moves that the said bill of complaint be dismissed for the following reasons and upon the following grounds, to wit:

1. That it appears upon the face of the bill of complaint that the facts stated therein are insufficient to constitute a cause of action in equity.

2. That it appears upon the face of the bill of complaint that the complainant has a plain, adequate and complete remedy at law.

3. That it does not appear upon the face of the bill of complaint, and no sufficient facts are averred therein to show, that the intervention of a court of equity and the assumption of jurisdiction by such a court is necessary or essential in order to effectually protect the property or rights of property of the complainant from great and irreparable injury or from any injury whatsoever.

[fol. 26] 4. That it appears on the face of the bill of complaint that the complainants are not within the class of persons who are or may be injured by the alleged unconstitutionality of the provisions of the statutes set forth in the bill of complaint.

5. That Chapter 233 of the Laws of 1915, as amended by Chapter 581 of the New York Laws of 1922 (Penal Law, §435, subd. 4) is a valid statute, duly passed by the Legislature of the State of New York, in the due exercise of its lawful and constitutional powers and does not violate any of the provisions of either Article I, §8 of the Constitution of the United States or the Fourteenth Amendment to such Constitution; and it does not appear upon the face of the bill of complaint or from the facts averred therein that the said statute, or the enforcement thereof by the State of New York by and through its governmental and administrative agencies, operates or will operate

to interfere unwarrantably with commerce between the several states, or to deprive or deny the complainants of the equal protection of the laws, or to deprive them of liberty or of any property or rights of property without due process of law.

6. That Chapter 580 of the New York Laws of 1922 (Penal Law §435-a) is a valid statute, duly passed by the Legislature of the State of New York, in the due exercise of its lawful and constitutional powers and does not violate any of the provisions of either Article I, §8 of the Constitution of the United States or the Fourteenth Amendment to such Constitution; and it does not appear upon the face of the bill of complaint or from the facts averred therein that the said statute, or the enforcement thereof by the State of New York by and through the governmental and administrative agencies, operates or will operate to interfere unwarrantably with commerce between the [fol. 27] several states, or to deprive or deny the complainants of the equal protection of the laws, or to deprive them of liberty or of any property or rights of property without due process of law.

7. That it appears upon the face of the bill of complaint that to grant the relief sought by the complainants would constitute an unlawful and unconstitutional interference by the agencies of the Government of the United States with the lawful and constitutional power, right and duty of the State of New York and its governmental agencies (including the District Attorney of the County of New York) to prosecute violations of criminal statutes of the State of New York.

8. That it appears upon the face of the bill of complaint that this court is without power or authority to grant the relief or to render the judgment and decree prayed for.

9. That no sufficient facts are alleged in the bill of complaint to warrant or justify the granting of the relief prayed for or any other equitable relief.

Wherefore, for the reasons and upon the grounds aforesaid, the defendant, Joab H. Banton, as District Attorney of the County of New York, respectfully moves this Court that the bill of complaint herein be dismissed as to him.

Dated: February 14, 1923.

Joab H. Banton, District Attorney of the County of New York. John Caldwell Myers, Solicitor for Defendant Joab H. Banton, as District Attorney of the County of New York, 32 Franklin Street, New York, N. Y.

[fol. 28] [File endorsement omitted.]

[fol. 29] STATE OF NEW YORK,
County of New York, ss:

DISTRICT COURT OF THE UNITED STATES

[Title omitted]

AFFIDAVIT OF DAVID L. PODELL—Filed Feb. 24, 1923

David L. Podell, being duly sworn, deposes and says:

I am an attorney at law and represent the complainants in the above entitled actions.

The annexed statement in question and answer form is taken from the record on appeal in the case of People v. Atlas, a prosecution conducted in the State Court under the unamended section 435, subdiv. 4, which involves the Kosher Laws.

[fol. 30] That the testimony of said Rev. Dr. Bernard Drachman as the same appears therein was read into said record by the consent of both sides from the case of People v. Goldberger. That in the last mentioned case, the said Rev. Dr. Bernard Drachman, as I am advised and verily believe, appeared personally as a witness under oath or affirmation and gave the annexed testimony.

(Sgd.) David L. Podell.

Sworn to before me this 16th day of February, 1923. (Sgd.)
Abraham Greenberg, Notary Public, Kings County. Kings
Co. Cl'k's No. 239. Reg. No. 4278. N. Y. Co. Cl'k's
No. 696. Reg. No. 4021. Term expires March 30, 1924.

[fol. 31] EXHIBIT TO PODELL'S AFFIDAVIT

Testimony of Rev. Bernard Drachman, D. D., in case of People
v. Goldberger, Used by Stipulation in Case of People v. Atlas

By Mr. Wable:

Q. In the book of Leviticus there is found what we believe Moses told us, as to what is clean and what is unclean, with relation to fitness for eating?

A. Yes.

Q. In the book of Leviticus there is listed a certain class of animals which it is permitted the Orthodox Hebrew to eat and certain animals of which he is forbidden to partake?

A. Yes.

Q. These animals of which the Jew is forbidden to partake of according to the law of Moses are animals that are not clean?

A. Not kosher, yes, sir.

Q. The word kosher itself means clean?

A. No, sir.

Q. It does not mean clean?

A. It is technically incorrect.

Q. Is it equivocally correct?

A. I would have to define what the word kosher means.

Q. There is found in the Old Testament at various places a list of animals of which the Jew may not partake of as food?

A. Yes, sir.

Q. There is found a direction as to how animals shall be slaughtered?

A. It is not found directly in the Bible.

Q. Is there an intimation?

A. There is a passage in which there is a traditional interpretation of ritual slaughtering. ✓

[fol. 32] Q. Are there in the Old Testament passages that define how slaughtered food, which would otherwise be kosher, is to be treated? ✓

A. It is not stated.

Q. It is stated how blood shall be drawn from the meat?

A. Yes, sir, it is found in the Bible.

(Witness continued:) Based upon these directions in the Old Testament, there has developed an oral interpretation and a written interpretation of what these passages in the Bible mean. In addition to the written law as contained in the Bible, there is an oral law or tradition which is taught by the Jewish authorities to have been handed down from generation to generation.

Q. Are these oral law or traditions to which you refer in the form of commentaries?

A. In the talmud, and Mishnah, Sifra and Sifrey. There are questions and answers. The cases were raised constantly from time to time in the course of history and these were submitted to the Rabbis or interpreters of the Jewish law. These are rules that regulate the religious Jewish life. They are called technically the responses of the Rabbis. There is a great rabbinical literature, which contains the decisions and explanations of all the Jewish ecclesiastical authorities. A Rabbi in deciding a question will be guided by all of these statements as far back as the Bible. In the talmud we have 2 great rabbinical codes known as the Schulcan Aruch and (—), is the great code or corpus juris, of the Jewish Theological Law, canon law. In addition to this there are all these Responsa; a great part of the literature in which these questions are treated.

[fol. 33] By Mr. Wahle:

Q. How large doctor is the bibliography in reference to this question of kosher?

A. Several thousand great volumes.

Q. What part of it is in the form of commentary?

A. Commentary and interpretation of the Bible and talmud.

Q. Give us the definition of what is meant by the talmud?

A. As I said before, along with the written law or the Bible there is an oral law. This oral law for many centuries was maintained

purely by word of mouth as an oral law. It was not written, it was strictly traditional. The Gemara was written about the third or fourth century of the Christian Era. Then there were the two talmuds, the Babylonian and Palestinian talmud, these two works together form what we call the talmud, and which is now the Jewish Law. The talmud is not all of the Jewish Law.

Q. Can you tell us whether it is accepted or whether there has been any determination except by the religious Hebrew, whether this law of what is kosher and what not kosher was originally a health law or a religious law?

A. Subjective interpretation or thorough interpretation of that that we do not know today, and that is a question of obedience. In our Bible and in our talmud are contained certain defined commandments and the interpretation of them by spiritual authorities. The duties of the Jew is to obey these commandments without question. Some intelligent men will say that it is a health *Jew*. The teachings are to train the will to obedience to the law. When a Jew is not permitted to eat certain kinds of food and that prohibition accompanies him all of his life he controls his will, and it keeps him [fol. 34] under moral control. These are the interpretations as far as the law is concerned, these questions are of no moment; the one of obedience is the one that tradition gives us.

By District Attorney:

Q. Let us assume that there is a butcher shop in the City of New York, with the sign kosher in front of the shop, that there is meat in that shop that is not koshered, and that chickens that are slaughtered according to the ritualistic method are brought into the butcher shop. In your opinion if these chickens were kept in the same shop, in the same place, in the same vessels and utensils, and handled in the same way as the meat not kosher would those chickens be kosher?

I object to the same vessels and utensils.

District Attorney: I will withdraw utensils and vessels and substitute in the same shop and in the same ice box.

A. This state of affairs would be one that rabinnical authority would distinctly disapprove of. We do not approve of having in the one place things that are permitted and things that are not permitted. Especially, inasmuch as it was a regular state of affairs. We consider it a very great sin to mislead anyone either directly or indirectly. A condition might be partly correct and partly false and not a direct falsehood, but the impression might be created that is misleading, and a disobedience of our law and sinful as such. If a religious Jew happens to have a forbidden article of food, trafe, which he cannot conscientiously use, he may dispose of it to people who can dispose of it and use it. If he buys a mass of material, he [fol. 35] may dispose of the forbidden things, because they have come casually into his possession. It is a duty of the Rabbi to adopt

such rules and regulations, when individual cases come up, according to the particular state of facts.

Mr. Wahle: I move to strike from the record Dr. Strachman's testimony in regard to chickens—(Interrupted.)

By District Attorney:

Q. As I understand your answer to Judge Wahle, you said there were certain requirements of the Hebrew faith, which provided that food products be safeguarded and secured in a particular way and that if they were not so safeguarded and so protected, that it would be considered constructively trafe, not kosher?

A. The religious Jew would not use it.

Q. You did say that the religion provided that Jewish people should be protected from certain impositions, and that if the meat in that store were sold with the chickens that they would become trafe and not kosher.

A. Yes sir.

Q. You gave your conclusion as to whether or not under the circumstances outlined and conditions presented to you, that the meat was not kosher. I would like to hear from you just exactly what your opinion is?

Objected to, as immaterial and incompetent.
Sustained.

District Attorney: It is conceded that this witness is an expert.

[fol. 36] By Justice Edwards:

Q. Part of the learning of your order is to know what constitutes kosher meat. The meat that is ritually fit such as a Jew may lawfully eat?

A. The individual Jew will only eat meat which has come from the permitted animal, and which has received the proper treatment which the Jewish law requires.

By Mr. Wahle:

Q. There are certain animals which are absolutely forbidden and which can never be kosher, and there are certain animals which may or may not be kosher?

A. Yes.

By Justice Edwards:

Q. There are certain permitted animals that may not be kosher?

A. Yes sir.

Q. Those are physical elements?

A. Yes sir.

By Justice Herbert:

Q. Is it possible that meat killed in the ordinary way, may become kosher?

A. No sir.

Q. Assuming that it was killed or slaughtered in a manner unknown, that they came into the store at 6 o'clock in the morning and it was not labelled kosher?

A. In the matter of the animal being slaughtered in a manner unknown that is quite out of the question. Kosher meat is marked, stamped or sealed.

Q. If meat is from a permitted, or rather from an animal not permitted, nothing could be done to make it kosher?

A. No sir.

[fol. 37] By Mr. Wahle:

Q. If the animal had been slaughtered with a sharp knife, properly shaped and the parts perfectly clean——(interrupted).

By District Attorney:

Q. If meat that was kosher was placed in actual contact with meat that was not kosher, what would be the effect?

A. It would be a rabbinical decision? Such conditions would not be permitted to exist by rabbinical authorities.

Q. You said something about misrepresentations being forbidden by rabbinical law?

A. We are here to demonstrate our law. The Jewish Law is not a foreign law, it is a great definite part of our ordinary law.

Mr. Wahle: Any law except the law of the State of New York is a foreign law.

Q. There are certain provisions of the Jewish law, that outline how a jew shall conduct himself?

A. Yes sir.

Justice Herbert:

Q. I show you People's Exhibit One, and I ask you to read the whole sign including the English and Hebrew characters?

A. A. H. Goldberger, Kosher Meat and Poultry Market.

Q. Tell us what part of speech the word there is kosher?

— It is an adjective qualifying the words meat and poultry market.

[fol. 38] By Justice Freschi:

Q. Is kosher also used as a noun?

A. It is an adjective always. There is another word which is almost the same in pronunciation meaning fitness. Kosher is an adjective meaning fit or proper and the word fit or proper according to the requirements of the Jewish Law. When a Jew says that he

understands it to mean that the thing is for sale, it refers to it being fit and proper according to the Jewish Law.

By Justice Herbert:

Q. Is there any other use of the word kosher except as an adjective?

A. No sir, not to my knowledge?

Mr. Wahle: In the standard dictionary, the definition is, or rather the word is defined as an adjective (Heb.). Permitted by or fulfilling the requirements of the law; clean; pure, said usually of food.

Q. Do you agree with that translation?

A. Essentially. Of course the standard dictionary is using it as people use it. I have gone to the bottom of it in the Hebrew language and the word kosher means fit and proper.

The Court: Nothing remains to complete your record but to take testimony as to the presence or absence of the letters on the bone, or the condition of the leaden seal.

[fol. 39] [File endorsement omitted.]

[fol. 40]

UNITED STATES DISTRICT COURT

[Title omitted]

Affidavits in Opposition to Motion for Temporary Injunction—
Filed February 24, 1923

[fol. 41]

[Index omitted]

[fol. 42]

UNITED STATES OF AMERICA,

Southern District of New York,

City, State and County of New York, ss:

[Title omitted]

AFFIDAVIT OF MOSES HYAMSON

Moses Hyamson, being duly sworn, deposes and says: That he is [fol. 43] Rabbi of Congregation Orach Chaim (Path of Life) of the City of New York; Member of the Faculty and Professor of Codes of the Jewish Theological Seminary of America; that formerly he was the Senior Dayan (Judge of the Ecclesiastical and Arbitration Court of London, England) for eleven years (1900-1911), and Acting Chief Rabbi of the United Hebrew Congregations of the British Empire for two years (1911-1913); and that he is the author of the English Edition of the *Collatio Mosaicarum et Romanarum Legum*

and of "The Oral Law," and holds the degree of LL. D., of London University, England.

That in the exercise of his duties as Dayan and subsequently as Acting Chief Rabbi of the British Empire, he was in chief control of and exercised supervision over the preparation and sale of kosher meat in London primarily and also in the British Isles. That he is fully familiar with the theory and practice pertaining to the Jewish ritual requirements as to the preparation of kosher meat.

That the term kosher is a perfectly clear and definite one in Jewish usage; that the law pertaining to the subject of kosher meat and products is set forth in the Rabbinical Code known as the *Schulchan Aruch* and specifically in that division of the Code known as the *Yoreh Déáh*. That the *Schulchan Aruch* dates back to the sixteenth century and has been accepted as binding from the time of its compilation and is so accepted at the present day by Orthodox Jews all over the world. The said Code was based on the previous compilations and codes dating back to the Talmud, the final redaction of which occurred in the sixth century.

Kosher meat is defined as the flesh of such beasts and fowl as are permitted by the Mosaic Law to be eaten by Jews (see Leviticus, [fol. 44] Chapter 11, and summary parallel in the book of Deuteronomy, Chapter 14, verses 3 to 21), slaughtered in accordance with the traditional rules and practice as set forth in the division of the *Schulchan Oruch* Code designated *Yoreh Déáh*.

The rules for slaughtering as set forth in the said Code may be briefly summarized as follows:

The ritual slaughterer known as a *Schochet* must be a person of the Jewish faith, of good character and possessed of the requisite knowledge and practical training as attested by a Jewish rabbi.

The mode of killing is an incision in the neck, severing the *œsophagus* and *trachea*. The knife is of more than surgical sharpness and smoothness, with a perfect edge, without the least perceptible unevenness, indentation or roughness. It is passed forward and backward over the operator's finger—flesh and nail—twelve times to test its sharpness and smoothness—over the flesh, because the *œsophagus* is fleshy like the finger; over the nail because the *trachea* is cartilaginous and hard like the nail. If any unevenness is felt the knife has to be smoothed on the hone and again tested before being used. So much importance is attached to smoothness of the knife that it is examined once more after killing; and if any unevenness, roughness or the minutest indentation is found the beast is regarded as having been improperly slaughtered, and its flesh is *Nebelah* and may not be consumed by Jews. The knife must be more than twice as long as the breadth of the neck of the animal—for large cattle, fourteen finger-breadths. Hence *Schochetim* have three different knives, one for birds, [fol. 45] one for large cattle, one for small cattle. The mode of killing cuts the *trachea*, *œsophagus*, *carotid arteries* and *jugular veins* with one continuous, to and fro movement of an exceedingly sharp and perfectly smooth knife, which has been prepared and tested for absolute freedom from roughness.

Five points have to be observed in correct ritual slaughter:

Shehiya.—There must be no pause. The incision must be continuous until all the vital parts are severed. A pause for an instant, voluntary or involuntary, renders the killing improper. The object is to obviate protracted pain.

Derasa.—There must be no pressing upward or downward, nor any hacking. The object is to secure positive and swift action in the incision.

Chalada.—There must be no burrowing. The knife must not be introduced under the skin, as in stabbing, or covered by the wool of the sheep or hair of the steer. The incision must be free, open and exposed, so as to drain the brain quickly and thus render the animal unconscious immediately.

Hagrama.—The incision must be made in a prescribed region of the neck, namely, through the trachea, preferably below the cricoid,—the complete cartilaginous ring immediately below the larynx,—but not through the larynx, nor through that part of the neck which is close to the chest, where the muscles are very thick and the trachea is deep seated. The reason is that the complete ring is hard, sometimes almost completely ossified, and might blunt or nick the instrument and thus cause delay in cutting and inflict [fol. 46] increased pain. Similarly, the muscles near the chest are thick and stout, and to cut through them would be attended with delay.

Ikkur.—There must not be a laceration, but an incision, a clean cut, not a tear; hence the knife is examined after the operation, as well as before, to make sure that it is perfectly smooth. If a roughness is found the beast is declared to have been improperly killed and its flesh is *Trefah*. The explanation is evident. It is well known that a tear is infinitely more painful than an incision. The prescribed incision, therefore, must be made by an instrument sufficiently long and broad, exceedingly sharp and perfectly smooth.

The incision should be carried from the surface of the skin down to, but not touching, the vertebræ. This necessity includes the severance of the trachea, œsophagus, carotid arteries, jugular veins, the pneumogastrics and the main or upper cardiac branches of the sympathetic nerves. Severing the carotids causes an immediate acute anæmia of the brain, which is followed instantaneously by unconsciousness.

The purpose of these minute rules is to spare the beast pain. The three precepts of surgery are that an operation should be performed *cito, tuto et jucundo*—quickly, with certainty and with a minimum of suffering. The prohibition of pausing—the insistence on continuousness in the cut—insures swiftness. The inhibition of pressing insures certainty, and the rule that the incision must be free and open secures quick and sure draining of the brain and prevents suffering.

[fol. 47] After the slaying of the beast, it is examined for lesions of a mortal character, of which the commonest and most usual in-

stance is diseased lungs. Any carcass found to be diseased is pronounced nonkosher or Trefah.

After the animal is found to be properly killed and after examination found to be free from mortal lesions or disease, the Schochet attaches to the various parts of the animal a tag containing the hour, day and week as well as the name of the Schochet and the Rabbi under whose supervision the slaughter and inspection has been conducted. In addition, the Schochet attaches a leaden seal containing the day and week and the word "kosher" to the various parts of the animal. In addition to this the meat itself in various parts of the animal is stamped with the day and week.

On the other hand, meat of an animal which has been improperly killed or found to be diseased, has none of the tags, seals or stamps attached, and in place thereof is designated as Trefah by the placing upon it of a "X" cut out on the bone.

This system is universally in use in this country, in the British Empire, as well as in the whole of Europe and is universally known as the marks distinguishing kosher from Trefah.

As a practical matter, therefore, the butcher who receives meat can have no difficulty whatever in knowing what meat is kosher and what meat is not kosher.

Meat which is not sold by the butcher within three days from the date of its slaughter must be sprinkled by him with water to keep the pores open in order that the meat when placed by the housewife in water and subsequently sprinkled with salt and kept in that condition for a time (all of which is required by the ritual law) may part [fol. 48] with its surface blood which is washed off before cooking.

Meat which has been slaughtered and prepared in the manner hereinbefore immediately outlined is kosher if it is not mixed with butter, milk or non-kosher meat.

The foregoing is a brief but complete summary of the entire law pertaining to kosher meat and meat preparations.

The questions treated in the Responsa literature concern elucidations of details in borderline cases. Moreover, the accepted decisions in the Responsa previous to the compilation of the Schulch Aruch were embodied in that Code.

Deponent respectfully states that the difference between kosher and non-kosher is perfectly clear and universally known and recognized by all Orthodox Jews.

Moses Hyamson.

Notary's certificate omitted.

[fol. 49] STATE OF NEW YORK,
County of New York,
City of New York, ss:

[Title omitted]

AFFIDAVIT OF ELIAS A. COHEN

Elias A. Cohen, being duly sworn, deposes and says: That he is Chairman of the Organization Committee of the Kehillah (Jewish Community) of New York City, a corporation organized under the Laws of the State of New York, the purposes of which said corporation generally are to stimulate and encourage the instruction of the Jews residing in the City of New York in the tenets of their religion and in the history, institutions and traditions of their faith.

That on the 29th day of January, 1923, your deponent presided at a conference of Rabbis representing various rabbinical colleges, synods and organizations, which said conference was called by the said Kehillah (Jewish Community) of the City of New York. That at said conference, the following resolution was unanimously adopted:

[fol. 50] "Resolved, that it is the unanimous sense of all those assembled here, representatives of the various rabbinical colleges and synods who are interested in the question of kosher, that the Law of Kashruth relative to meat or meat preparations is clear, simple and distinct, and that the laws appertaining thereto are easily ascertainable in the Jewish code applying thereto."

That at said conference the following named Rabbis were present and participated in the adoption of the resolution above set forth:

Rabbi Moses Hyamson, 1335 Madison Avenue, Rabbi of Cong. Orach Chaim, Member of Faculty of Jewish Theological Seminary, Senior Dyan (Judge Ecclesiastical and Arbitration Court) for 11 years, 1900-1911, and Acting Chief Rabbi of United Hebrew Congregations of the British Empire 2 years, 1911-1913.

Rabbi Philip Klein, 137 West 119 Street, Rabbi of Cong. Chab Zedek and Member of Association of Orthodox Rabbis.

Rabbi M. S. Margolies, 48 East 89 Street, Rabbi of Cong. Kehillath Jeshurum and Member of Executive Committee of the Union of Orthodox Rabbis of the United States and Canada.

Rabbi S. E. Jaffe, 207 East Broadway, Rabbi of Beth Medrash Hagodal and Member of Executive Committee of Union of Orthodox Rabbis of the United States and Canada.

Rabbi G. Wolf Margolis, 203 East Broadway, Rabbi of United Hebrew Community of New York.

Rabbi Abr. Yudelowitz, 243 East Broadway, Chief Rabbi of Federation of Orthodox Synagogues of America and President of the Jewish Ministers' Association.

[fol. 51] Rabbi Herbert S. Goldstein, 1893 Seventh Avenue, Rabbi of Institutional Synagogue and President of the Union of Orthodox Jewish Congregations of America.

Rabbi Elias L. Solomon, 1326 Madison Avenue, Rabbi of Cong. Shaarei Zedek and President of United Synagogue of America.

Rabbi Jacob Kohn, 235 West 110th Street, Rabbi Temple Anshe Chesed and Member of Executive Council of United Synagogue.

Rabbi B. B. Guth, 103 Avenue A, Rabbi Cong. Ahavath Chesed Ch. S. and Anshe Ungarn and Member of Union of Orthodox Rabbis of United States and Canada.

Rabbi David de Solo Pool, 99 Central Park West, Rabbi Cong. Shearith Israel and Executive Director of Jewish Education Association.

Rabbi A. Gallant, 508 East 140 Street, Rabbi of Cong. Beth Abrohom, President of Association of Orthodox Rabbis of the Bronx and Member of Executive Committee of Union of Orthodox Rabbis of the United States and Canada.

Rabbi S. L. Hurwitz, 66 West 118 Street, Principal Salanter Talmud Torah and Member of Jewish Ministers' Association of Harlem.

Rabbi Bernard Drachman, 128 West 121 Street, Rabbi of Cong. Zichron Ephraim, Hon. President of Union of Orthodox Jewish Congregations of America and President of Jewish Sabbath Alliance of America.

Rabbi Samuel Gerstenfeld, 460 Grand Street, Secretary of Association of Orthodox Rabbis and Member of Faculty of Isaac Elchanan Theological Seminary.

Rabbi A. S. Pfeffer, 112 Avenue C, Rabbi Beth Hamedrash Hagodol and Member of Executive Committee of Union of Orthodox Rabbis of United States and Canada.

[fol. 52] Rabbi B. Z. Pearl, 118 West 112 Street, President of Jewish Ministers' Association of Harlem.

Rabbi Jacob Katz, 945 East 163 Street, Rabbi Montefiore Cong. and Chaplain of Sing Sing Prison.

Rabbi Jacob Tarlau, 461 West 159 Street, Rabbi of People's Synagogue of the Educational Alliance.

Rabbi J. J. Margolin, 204 Henry Street, Rabbi of Cong. Emunath Israel of New York and Cong. Shomrei Shabath Bnei Israel of the Bronx, New York, and Member of Jewish Ministers' Association.

Rabbi E. Inselduch, 171 Vernon Avenue, Brooklyn, Rabbi Beth Medrash Hagodal and Member of Executive Committee of Union of Orthodox Rabbis of United States and Canada.

Rabbi A. I. Schuchatowitz, 22 West 114 Street, Rabbi Cong. Sons of Israel Kalvarier and Member Jewish Ministers' Association of Harlem.

Rabbi I. L. Epstein, 213 Henry Street, Rabbi Cong. Senier and Wilner and Member of Jewish Ministers' Association.

Rabbi E. Friedman, 146 Lewis Street, Member of Association of Orthodox Rabbis.

Rabbi M. Gorodeisky, 717 Kelly Street, Rabbi Cong. Tomehe Torah and Member of the Jewish Ministers' Association.

Rabbi A. D. Burack, 565 Willoughby Avenue, Brooklyn, Rabbi of Cong. Chel Moshe Chevra Thilim and Member of Association of Orthodox Rabbis.

Rabbi Benjamin Aaronwitz, 65 East 121 Street, of Agudath Ha-Rabonim and Isaac Elchanan Theological Seminary.

Rabbi Sigmund Abeles, 450 Monroe Avenue, Brooklyn, Rabbi of Cong. Glory of Judea, and Member of Executive Committee of Union [fol. 53] of Orthodox Rabbis of United States and Canada.

Rabbi M. Buchbinder, 323 Alabama Avenue, Brooklyn, of the Agudath Ha-Rabonim.

Rabbi Louis Klein, 266 East 7 Street, Rabbi of Cong. Shebeth Achim Anshei Slonim.

Rabbi B. Karp, 1284 Southern Boulevard, of Agudath Ha-Rabonim.

Rabbi M. A. Kaplan, 22 East 108 Street, of Agudath Ha-Rabonim and Jewish Ministers' Association of Harlem.

Rabbi J. Levinson, 481 Stone Avenue, Brooklyn of Agudath Ha-Rabonim and Association of Orthodox Rabbis.

Rabbi M. Landau, 433 Grand Street, Rabbi of Adath Hochasidim D'Polen.

Rabbi L. Predmesky, 1467 Washington Avenue, Rabbi Cong. Tremont Hebrew Free School and Union of Orthodox Rabbis of United States and Canada.

Rabbi M. Guizk, 1961-79 Street, Brooklyn, of Agudath Ha-Rabonim and Executive Committee of Orthodox Rabbis of United States and Canada.

Dr. Leo Jung, 41 West 86 Street, of the Society for the Advancement of Judaism.

Rabbi T. Newlander, 954 Leggett Avenue, of the Association of Orthodox Rabbis.

Rabbi L. Plotkin, 509 Elton Street, Brooklyn, of the Agudath Ha-Rabonim.

Rabbi M. Rabinowitz, 28 Montgomery Street, of the Agudath Ha-Rabonim.

Rabbi J. Redelheim, 120 West 112 Street, of the Agudath Ha-Rabonim.

Rabbi Daniel Shapiro, 619 Willoughby Avenue, Brooklyn, of the Association of Orthodox Rabbis.

Rabbi A. Sielenfreund, 325 East 83 Street, Member of Jewish Ministers' Association.

[fol. 54] Rabbi R. Winer, 1589 Washington Avenue, of the Agudath Ha-Rabonim and the Association of Orthodox Rabbis.

Rabbi S. Alishefski, 778 Beck Street, of the Association of Orthodox Rabbis and member of Executive Committee of Orthodox Jewish Congs. of America.

The following Rabbis were also present:

Rabbis Hirsh Dachowitz, 626 Rockaway Avenue, Brooklyn; Israel Dickstein, 304 East Broadway; Joseph Sechtzer, 218 East Houston Street; B. Shapiro, 245 Clinton Street; Elijah M. Finkelstein, 1226 50 Street, Brooklyn; Samuel Hurwitz, 856 East 172 Street, and Israel Hager, 132 Broome Street.

Elias A. Cohen.

Notary's certificate omitted.

[fol. 55] STATE OF NEW YORK,
County of New York,
City of New York, ss:

[Title omitted]

AFFIDAVIT OF BERNARD DRACHMAN

Bernard Drachman, being duly sworn, deposes and says: That he is Rabbi of Congregation Zichron Ephraim and Honorary President [fol. 56] of the Union of Orthodox Jewish Congregations of America.

That the term kosher is a perfectly clear and definite one in Jewish usage; that the questions treated in the Responsa concern only exceptions or border line cases, are in many instances repetitions and constitute only an infinitesimal part of the cases where the law of kosher operates, and that meat and meat products are kosher when prepared in accordance with the dietary laws codified in the Rabbinical Code known as Shulchan Aruch.

Bernard Drachman.

Notary's certificate omitted.

[fol. 57]

[Title omitted]

AFFIDAVIT OF HERBERT S. GOLDSTEIN

Herbert S. Goldstein, being duly sworn, deposes and says: That he is Rabbi of the Institutional Synagogue and President of the Union of Orthodox Jewish Congregations of America.

That the term kosher is a perfectly clear and definite one in Jewish usage; that the questions treated in the Responsa concern only exceptional or border line cases, are in many instances repetitions and constitute only an infinitesimal part of the cases where the law of kosher operates, and that meat and meat products are kosher when prepared in accordance with the dietary laws codified in the Rabbinical Code known as Shulchan Aruch.

Herbert S. Goldstein.

Notary's certificate omitted.

[fol. 58]

[Title omitted]

AFFIDAVIT OF DR. DE SOLA POOL

Rabbi David De Sola Pool, being duly sworn, deposes and says that he is Rabbi of Congregation Shearith Israel and Executive Director of the Jewish Education Association; that the orthodox Hebrew religious requirement of Kosher in relation to meat and

meat preparations, known as the Law of Kashruth, is clear, simple and distinct, and the laws appertaining thereto are easily ascertainable in the Jewish Code applying thereto.

D. De Sola Pool.

Notary's certificate omitted.

[fol. 59]

[Title omitted]

AFFIDAVIT OF PH. KLEIN

Dr. Ph. Klein, being duly sworn, deposes and says that he is Rabbi of Ohab Zedek Cong. and member of the Assn. of Orthodox Rabbis; that the orthodox Hebrew religious requirement of Kosher in relation to meat and meat preparations, known as the Law of Kashruth, is clear, simple and distinct, and the laws appertaining thereto are easily ascertainable in the Jewish Code applying thereto.

Rabbi Dr. Ph. Klein.

Notary's certificate omitted.

[fol. 60]

[Title omitted]

AFFIDAVIT OF M. S. MARGOLIES

Rabbi M. S. Margolies, being duly sworn, deposes and says that he is Rabbi of Congregation Kehillath Jeshurum and Member of Ex. Com. Union of Orthodox Rabbis of U. S. and Canada; that the orthodox Hebrew religious requirement of Kosher in relation to meat and meat preparations, known as the law of Kashruth, is clear, simple and distinct, and the laws appertaining thereto are easily ascertainable in the Jewish Code applying thereto.

Rabbi M. S. Margolies.

Notary's certificate omitted.

[fol. 61]

[Title omitted]

AFFIDAVIT OF M. S. MARGOLIES

M. S. Margolies, being duly sworn, deposes and says: That he is Senior Rabbi of Congregation Kehillath Jeshurun of the City of New York; Honorary President of the Union of Orthodox Rabbis of the United States and Canada, and a member of the Ritual Commission [fol. 62 & 63] of the Union of Jewish Orthodox Congregations of America. That he is the Chief Supervisor of the Rabbis in charge of the Jewish Ritual Slaughtering Department of the United Dressed

Beef Company, situated at 43rd Street and First Avenue, in the City of New York.

That he has read the affidavit of Moses Hyamson verified the 15th day of February, 1923, and that the statements therein contained as to the Jewish Ritual Law and practice, is true and correct.

As stated in the said affidavit of Moses Hyamson, meat which has been slaughtered in accordance with the Jewish Ritual requirements so as to make the same kosher, has attached thereto a seal and tag as well as markings made on the meat itself.

Exact duplicate specimens of the seal and tag are hereto attached.

M. S. Margolies.

Notary's certificate omitted.

[fol. 64]

IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION

The above cases were argued together and will be considered in one opinion.

The complainants, by their bills in equity, seek to have Chapters 580-581 of the Laws of 1922, also known as Sections 435 and 435a of the Penal Law, declared to be in contravention of the Federal Constitution. The complainants are here contending a right to injunctive relief in equity pursuant to Section 24, sub. div. 1 of the Judicial Code. The contention is that Satz, a delicatessen dealer is obligated under the statute, to label his meats with the signs and notices required by the statute. The Lewis & Fox Company is a foreign corporation, and sells its meat products in original packages in the State of New York. The Hygrade Provision Co. Inc., is a provision manufacturer, having places of business within the City of New York and is under duty to label its meats in accordance with this statute. It sells its products in this and other states.

The allegations of the complaints are, that they each have invested large amounts of money, have established an extensive business and valuable good will and, that they are selling their meat [fol. 65] and meat preparations under the approval of the laws and regulations of the Department of Agriculture and bear Government labels as being clean, pure and wholesome food. Each pleads that it has, according to its honest belief, sold "kosher" meat. The statutes of New York in question, as hereinafter set forth, provide requirements for merchants, similarly situated as the complainants, in selling or accepting for sale kosher and non-kosher meat or meat preparations. The claim is that the District Attorney of the County of New York, where the complainants carry on their business, and the Attorney General of the State of New York, threaten to prosecute all complaints against persons engaged as merchants in the business complainants are engaged in, if they fail to comply with the provisions of this statute, in the sale of meat and meat prepara-

tions such as kosher, and it is alleged that the aforesaid threats of prosecution on the part of the defendants and by reason of the fear inspired by the enactment and requirements of the laws in question, the complainants and their customers are called upon at their peril, to determine whether or not any meat products are kosher or non-kosher, and to label the same in accordance with the requirements of the statutes set forth, which would be a great detriment and injury to the complainants' good will and established trade. There are the further allegations that the amount in each complaint involves more than the sum of Three thousand dollars.

The principal contention is that in order to determine the guilt of one who violates the statute, it is necessary to determine what [fol. 66] the Jewish Law, and the customs, traditions and precedents of the orthodox Jewish religious requirements necessitates, so that such meats as the complainants handle, may be sold as kosher or non-kosher. There are allegations that the complainants label their meat "kosher" and that they prepare it in strict accordance with what the complainants honestly believe to be the orthodox religious requirements in so far as it is humanly possible for the complainants to so determine. There are general allegations that the complainants sell only such meats as are clean, wholesome and proper food commodities, carefully inspected and eminently fitted and desirable for human consumption. By this it is said that the statute is vague and indefinite and fails to describe what constitutes kosher meat. There is also an allegation that one of the complainants is engaged in interstate commerce and that the statute in question constitutes the imposition of an undue burden on interstate commerce.

Both sections of the Constitution (Art. 14, Section 1; Art. 1, Section 8) are said to be violated. If the statutes in question are unconstitutional, as claimed, the complainants are entitled to equitable relief under the bill. (Wilson vs. New, 243 U. S. 332; Hamilton vs. Kentucky Distilleries, 251 U. S. 146; Ruppert vs. Caffey, 251 U. S. 246.)

The statutes are as follows:

"A person, who, with intent to defraud:

* * * * *

4. Sells or exposes for sale any meat or meat preparation and falsely represents the same to be kosher/ or as having been prepared under and of a product or products sanctioned by the orthodox Hebrew religious requirements; or falsely represents any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the [fol. 67] word 'kosher' in any language or sells or exposes for sale in the same place of business both kosher and nonkosher meat or meat preparations who fails to indicate on his window signs and all display advertising, in block letters at least four inches in height, 'kosher and nonkosher meat sold here;' or who exposes for sale in any show window or place of business both kosher and nonkosher

meat or meat products who fails to display over such meat or meat preparation so exposed a sign in block letters at least four inches in height reading 'kosher meat,' or 'nonkosher meat,' as the case may be, is guilty of a misdemeanor." (Section 435.)

"Sale of Kosher Meat and Meat Preparations.—A person, who, with intent to defraud, sells or exposes for sale any meat or meat preparation and falsely represents the same to be kosher whether such meat or meat preparation be raw or prepared for human consumption, or as having been prepared under and of a product or products sanctioned by the orthodox Hebrew religious requirements; or falsely represents any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word 'kosher' in any language; or sells or exposes for sale in the same place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, who fails to indicate on his window signs and all display advertising in block letters at least four inches in height, 'kosher and nonkosher meat sold here;' or who exposes for sale in any show window or place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, who fails to display over each kind of meat or meat preparation so exposed a sign in block letters at least four inches in height reading 'kosher meat,' or 'nonkosher meat,' as the case may be, is guilty of a misdemeanor." (Section 435a).

The effect of these statutes is to continue the prohibition of selling, as kosher, any food product which is not kosher with intent to defraud and to add a prohibition against the sale of both kosher and nonkosher meat preparations in the same shop with intent to defraud when not indicating, by an appropriate and described sign, that both kosher and nonkosher products are dealt in, and labeling each article sold or exposed for sale. Is the word "kosher" and the phrase "Orthodox Hebrew religious requirements" vague, uncertain [fol. 68] and indefinite, as used in the statute? The argument is that no man can really be said to have an intent to defraud his fellow-man when he cannot, from the very nature of the case, know that his act will be fraudulent or otherwise. And it is argued, that the term "kosher" embraces a great controversial field of ecclesiastical law, neither defined nor definable, and that the phrase "Orthodox Hebrew Religious requirements" embraces a multitude of degrees of orthodoxy and customs, traditions and precedents, oral and written, some of which are in direct conflict with each other, involving the use of a fine judgment based upon a thorough and exhaustive knowledge and rather a matter of individual belief or judgment which is always indefinite and undefinable. Thus, it is said, the honest merchant is confronted with an insurmountable difficulty. The further claim is that in the case of a jury trial, the jury would not be merely applying a standard adopted by the legislature, but will, in itself, be devising and creating the standard which, it is claimed, is condemned by the Supreme Court decisions. Reliance is placed in

this argument upon the principle announced in *United States vs. Cohen* (255 U. S. 81). That case, in effect, holds that the legislature must define the new offense and provide for its punishment in well expressed language that will not deceive the common mind. The idea being that the citizen should not unnecessarily be placed on a plane whereby an honest error in the construction of a penal statute, may be subject to a prosecution. Before punishment can be inflicted the offenders must be honestly and plainly within the statute. (*Rich vs. Went*, 134 U. S. 632). Laws which define crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid. (*United States vs. Brewer*, 139 U. S. 278).

[fol. 69] It is evident from a reading of these statutes that it was the intention of the New York Legislature to specifically make an intent to defraud an essential element of the offense created. It was to prevent fraud and imposition in the sale of meat for the orthodox Hebrew religious population that the legislation in question was enacted. The State legislatures have long been held competent to enact laws intended to prevent fraud and imposition. A State statute requiring all compound syrups to be labeled conspicuously with the percentage of each ingredient, naming the preponderating ingredient first, is one for the prevention of adult-ration and fraud, and the manufacturer has no Constitutional right to sell goods without giving to the purchaser such fair information as commanded by that statute. (*Corn Products Refining Co. vs. Eddy*, 249 U. S. 427). A statute which prohibits the sale of ice cream containing less than a specified percentage of butter fat, although the product sold was concededly wholesome, is a law designed to prevent persons from being misled to the weight, measure, quality or ingredients of the article of general consumption, and it is within the police power of the State to so legislate. (*Hutchison Ice Cream Co. vs. Iowa*, 242 U. S. 153) A statute requiring lard to be labeled "black lard" or "intestinal lard" so as to prevent the public from being misled as to the quality purchased, is not in violation of the rights of the State legislature. (*Armour vs. North Dakota*, 240 U. S. 510) where the evident purpose of the statute is to prevent fraud and imposition in the sale of food for domestic animals, which is deemed a matter of great importance to the State, and where its terms are directed to that end, they are not unreasonable. (*Savage vs. Jones*, 225 U. S. 501.)

The complainants urge that they have built up a large and profitable business in the sale of kosher meat products. Their business, as they have created it, must of necessity be on the faith of their [fol. 70] customers, orthodox Hebrews, to whom kosher meat is well known and understood. The meat products become desirable to them only when prepared, cured and sold under the method of their religious training. Complainants say they have long sold kosher meat products and it must be that the term "kosher" has long been understood by them. The authorities of Hebraic law may differ as to what should be done in the slaughtering and curing of these meat products. The variation of opinion as to what

acts are to be performed and what conduct is to be followed in preparing and caring for kosher meat, will not render the statute uncertain or vague. (*United State vs. Standard Brewery*, 251 U. S. 210; *Hamilton vs. Kentucky Distilleries*, 251 U. S. 146.)

But under the statute, there must appear, in order to convict of the crime, an act and intent to defraud, and because of this there can be no such indefiniteness as to violate the guaranty by the Fourteenth Amendment of due process of law. (*Omaechevarria vs. Idaho*, 246 U. S. 343.) In *Heath & Milligan Co. vs. Worst* (207 U. S. 338), the Supreme Court considered a penal statute of North Dakota prohibiting the sale or exposure for sale of any paint containing any ingredient other than pure linseed oil, pure carbonate of lead, oxide of zinc, turpentine, Japan dryer and pure colors, unless the paint was properly labeled with a label showing the percentage of each ingredient not specified and the name and residence of the manufacturer. It was there said, where the objection of indefiniteness and vagueness was presented in the use of the phrase "pure colors:"

[fol. 71] "We regard these criticisms answered by our general discussion, and we have specially noticed them that it may not be thought we have overlooked them. They may emphasize what we have already said as to the possible imperfection of the classification of the statute. It must not be forgotten, however, that inaccuracies of definition may be removed in the administration of the law. And it must be borne in mind that the use of the non-enumerated ingredients is not forbidden nor the advantages of the practical tests and scientific research made by appellants taken away from them. The sole prohibition of the statute is that those ingredients shall not be used without a specific declaration that they are used—a burden maybe, but irremediable by the courts—maybe, inevitable, in legislation directed against the adulteration of articles or to secure a true representation of their character or composition."

Nor do we think that the statute affects interstate commerce so as to be an unwarranted interference thereof. The burden of the statute is to prevent fraud and imposition in the sale of kosher meats, which the legislature of the State in its wisdom thought to require protection. In no sense is it aimed at interstate commerce. It does not discriminate against interstate commerce. It promotes honest dealing by merchants dealing in kosher meat. While the State cannot, under the claim of exerting its police powers, undertake what is essentially a regulation of interstate commerce, or impose a direct burden upon that commerce, still when the local regulation has a real relation to the suitable protection of the people of the State, and is reasonable in its requirements, it is not invalid because it may incidentally affect interstate commerce, provided it does not conflict with legislation enacted by the Congress pursuant to its constitutional authority. (*Savage vs. Jones*, 225 U. S. 501; *Slieh vs. Kirkwood*, 237 U. S. 52; *Ames Bird Co. vs. Thompson*, 274 Fed. 702.)

Legislation in a great variety of ways may affect commerce and

persons engaged in it without constituting a regulation of it within [fol. 72] the meaning of the Federal Constitution. Legislation of a State not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting the operation of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuits. (*Plumley vs. Mass.*, 155 U. S. 461.)

The Court of Appeals of the State of New York has held that the use of the word "kosher" used in the statute, is used in no indefinite sense, but by its ordinary meaning as such term is used in the trade. It is to designate meat as having been prepared under, and a product sanctioned by the orthodox Hebrew religious requirements, and thus the Legislature has definitely defined the word "kosher" as used in the statute. (*People vs. Atlas*, 183 App. Div. 595; *affd.* 230 N. Y. 629.)

We think that the attack made upon this statute must fail, and that the statute in no way is legislation in contravention of the Federal Constitution.

The applications for preliminary injunctions are denied, and the motions to dismiss the complaints are granted.

Dated March 22, 1923.

[fol. 73] UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING INJUNCTION AND DISMISSING BILL OF COMPLAINT—Filed April 25, 1923

This cause having come on to be heard on the order to show cause why a preliminary injunction should not issue as prayed for in the bill of complaint and on the motions made by the respective defendants to dismiss the bill of complaint, and the Court having heard the arguments of David L. Podell, Esq., Solicitor for the complainant, Samuel H. Hofstadter, Esq., Solicitor for the defendant Carl Sherman, as Attorney General of the State of New York, and John Caldwell Myers, Esq., Solicitor for the defendant Joab H. Banton, District Attorney of New York County, and due deliberation having been had, it is

Ordered that the motion for an injunction pendent lite be and it hereby is denied; and it is

Fourth ordered that the bill of complainant herein be and it hereby is dismissed.

Dated: New York, April 25, 1923.

Enter.

Martin T. Manton, C. J. Learned Hand, D. J. Jno. C. Knox, D. J.

[fol. 74] [File endorsement omitted.]

[fol. 75]

UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—Filed May 1, 1923

To the Honorable Julian W. Mack, U. S. Circuit Judge:

The above named appellants respectfully show:

That they consider themselves aggrieved by the order made and entered in the United States District Court for the Southern District of New York, on the 25th day of April, 1923, in the office of the Clerk of this Court, denying the motion for an injunction pendente lite and dismissing the bill of complaint and do hereby petition for an appeal from said order and decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors herewith and pray that an appeal may be allowed and citation granted and directed to the defendants herein and all other parties in interest, commanding them and each of them to appear before the Supreme Court of the United States.

Dated, New York, April 26, 1923.

Hygrade Provision Co., Inc., E. Greenebaum Co., Inc., and Guckenheimer & Hess, Inc., by David L. Podell, Solicitor for Complainants, Office & P. O. Address 233 Broadway, New York City.

The foregoing appeal and petition therefor is hereby allowed.

Dated New York, May —, 1923.

J. W. Mack, U. S. Circuit Judge.

[fol. 76] [File endorsement omitted.]

[fol. 77]

UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed May 1, 1923

SIRS: Please take notice that Hygrade Provision Co., Inc., E. Greenebaum Co., Inc., and Guckenheimer & Hess, Inc., feeling themselves aggrieved by the order and decree made and entered herein dated the 25th day of April, 1923, hereby appeal to the Supreme Court of the United States, to be holden at the Capitol, in the City of Washington, in the District of Columbia, from the said order denying the motion for an injunction pendente lite and dismissing the bill of complaint and from each and every part of said order.

Dated New York, April 26th, 1923.

David L. Podell, Solicitor for Complainants, Office & P. O. Address, 233 Broadway, Borough of Manhattan, New York City.

To Samuel H. Hofstadter, Esq., Solicitor for Carl Sherman, as Attorney General of the State of New York, Office & P. O. Address 60 Wall Street, New York City. John Caldwell Myers, Esq., Solicitor for Joab H. Banton, as District Attorney of the County of New York, Office & P. O. Address 32 Franklin Street, New York City.

[fol. 78] [File endorsement omitted.]

[fol. 79] UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed May 1, 1923

Come now the complainants and file the following Assignment of Errors upon which they rely for their appeal from the decree made by this Honorable Court on the 25th day of April, 1923, in the above entitled action dismissing the complainants' bill and denying to them the relief prayed for.

1. That the Court erred in denying the application for an injunction pendente lite.

2. That the Court erred in dismissing the bill of complaint.

3. That Chapter 580 of the Laws of 1922 is so vague, indefinite and uncertain as to be a violation of the constitutional rights of the complainants under Section I, Article XIV of the Constitution of the United States.

4. That Chapter 581 of the Laws of 1922 is so vague, indefinite and uncertain as to be a violation of the constitutional rights of the complainants under Section I, Article XIV of the Constitution of the United States.

[fol. 80] 5. That Chapter 233 of the Laws of 1915 is so vague, indefinite and uncertain as to be a violation of the constitutional rights of the complainants under Section I, Article XIV of the Constitution of the United States.

6. That Chapter 580 of the laws of 1922 involves a stigmatization of the complainants' goods and thus destroys their value which is a deprivation of property within the meaning of Section I, Article XIV of the Constitution of the United States.

7. That Chapter 581 of the Laws of 1922 involves a stigmatization of the complainants' goods and thus destroys their value which is a deprivation of property within the meaning of Section I, Article XIV of the Constitution of the United States.

8. That Chapter 580 of the Laws of 1922 denies the complainants the equal protection of the law and is thus in violation of Section I, Article XIV of the Constitution of the United States.

9. That Chapter 581 of the Laws of 1922 denies the complainants the equal protection of the law and is thus in violation of Section I, Article XIV of the Constitution of the United States.

10. That Chapter 233 of the Laws of 1915 denies the complainants the equal protection of the law and is thus in violation of Section I, Article XIV of the Constitution of the United States.

11. That Chapter 580 of the Laws of 1922 imposes an undue and unreasonable burden upon articles which are the subject of Interstate Commerce and is therefore in violation of Section VIII, Article I of the Constitution of the United States.

[fol. 81] 12. That Chapter 581 of the Laws of 1922 imposes an undue and unreasonable burden upon articles which are the subject of Interstate Commerce and is therefore in violation of Section VIII, Article I of the Constitution of the United States.

13. That Chapter 233 of the Laws of 1915 imposes an undue and unreasonable burden upon articles which are the subject of Interstate Commerce and is therefore in violation of Section VIII, Article I of the Constitution of the United States.

In order that the foregoing Assignment of Errors may be and appear of record, the complainants present the same to the Court, and pray that such disposition be made thereof as in accordance with the laws and the statutes of the United States in such cases provided, and the complainants pray for a reversal of the decretal order and decree of dismissal made and entered by said Court.

David L. Podell, Attorney and Solicitor for Complainants,
Office & P. O. Address 233 Broadway, Borough of Man-
hattan, New York City.

[fol. 82] [File endorsement omitted.]

[fol. 83] CITATION IN USUAL FORM SHOWING SERVICE ON CARL
SHERMAN—Filed May 3, 1923, and omitted in printing

[fol. 84] [File endorsement omitted.]

[fol. 85] DISTRICT COURT OF THE UNITED STATES

[Title omitted]

STIPULATION EXTENDING TIME—Filed June 1, 1923

It is hereby stipulated and agreed by and between the Attorneys for the respective parties hereto that the return day of the Citation

in the above entitled case be extended from May 31st, 1923, up to and including June 15th, 1923.

Dated New York, May 29th, 1923.

David L. Podell, Solicitor for Complainants. John Caldwell Myers, Solicitor for District Attorney, Joab H. Banton. Samuel Hofstadter, Solicitor for Attorney General, Carl Sherman.

The foregoing is consented to.

Dated New York, May 31st, 1923.

Alex. Gilchrist, Clerk.

[fols. 86 & 87] BOND ON APPEAL FOR \$500—Filed June 1, 1923;
omitted in printing

[fol. 88] UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

Dated May 3rd, 1923.

David L. Podell, Attorney for Complainants. John Caldwell Myers, M. J. E., Attorney for Defendant Joab H. Banton. Samuel H. Hofstadter, Attorney for Defendant Carl Sherman.

[fol. 89] UNITED STATES OF AMERICA,
Southern District of New York, ss:

[Title omitted]

CLERK'S CERTIFICATE

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 2d day of June, in the year of our Lord one thousand nine hundred and twenty-three and of the Independence of the said United States the one hundred and forty-seventh.

Alex. Gilchrist, Jr., Clerk. (Seal of the District Court of the United States, Southern District.)

Endorsed on cover: File No. 29,713. S. New York D. C. U. S. Term No. 403. Hygrade Provision Company, Inc., E. Greenebaum Company, Inc., and Guckenheimer & Hess, Inc., appellants, vs. Carl Sherman, as Attorney General of the State of New York, and Joab H. Banton, as District Attorney of the County of New York. Filed June 29th, 1923. No. 29,713.

(2242)

